Morco Industries, Inc.; and All Southern Fabricators, a Division of Morco Industries, Inc. ***and*** **Sheet Metal Workers International Association, Local Union No. 57, affiliated with Sheet Metal Workers International Association, AFL-CIO.** Case 12-CA-9065

March 20, 1981

DECISION AND ORDER

On November 18, 1980, Administrative Law Judge Richard J. Linton issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Morco Industries, Inc.; and All Southern Fabricators, a Division of Morco Industries, Inc., Tampa, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge: This case was heard before me in Tampa, Florida, on August 11 and 12, 1980, pursuant to a complaint issued April 15, 1980, by the General Counsel of the National Labor Relations Board through the Regional Director for Region 12 of the Board. The complaint is based upon a charge filed March 5, 1980, by Sheet Metal Workers International Association, Local Union No. 57, affiliated with Sheet Metal Workers International Association, AFL-CIO, herein the Union, and subsequently amended, against Morco Industries, Inc., d/b/a All Southern Fabricators.[1]

In his complaint, as amended, the General Counsel alleges that Respondent is a single, integrated business enterprise and that it has violated Section 8(a)(5) of the Act by unilaterally transferring work from its All Southern Fabricators bargaining unit in Pinellas Park, Tampa, Florida, to its Morco Stainless Steel Fabricators bargaining unit in Long Beach, Mississippi. For many years, the Union has been the exclusive collective-bargaining representative of the All Southern Fabricators (Southern or Tampa, herein) bargaining unit. On the other hand, the Long Beach, Mississippi (Morco Stainless or Long Beach herein), facility is new and the employees unrepresented.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent (Charging Party filed none), I make the following:

FINDINGS OF FACT

I. JURISDICTION

Jurisdiction is not an issue. Morco Industries, Inc., a Florida corporation, with headquarters in Mobile, Alabama, operates an unincorporated facility in Pinellas Park, Tampa, Florida (known as All Southern Fabricators Southern, where it is engaged in manufacturing and selling of restaurant equipment. During the past 12 months, Respondent, through its Southern facility, sold and shipped products valued in excess of $50,000 direct from Tampa, Florida, to customers located at points outside the State of Florida. Respondent admits, and I find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Corporate Structure and the Single-Employer Issue*

As the pleadings regarding the identity of Respondent remain imprecise, attention must be devoted here to that subject. Originally the complaint named Morco Industries, Inc.; and Morco Industries, d/b/a All Southern Fabricators as Respondent and, in paragraph 2(c) of the complaint, they were alleged to be a single integrated enterprise. In its answer Respondent termed this allegation as irrelevant. Early in the hearing, the General Counsel was permitted to amend the complaint so that Respondent was described as: Morco Industries, Inc.; and All Southern Fabricators, a Division of Morco Industries, Inc. At the hearing, and in its brief, Respondent has described itself as All Southern Fabricators, a Division of Morco Industries, Inc.

Record evidence clarifies the situation and demonstrates that Southern and Morco Stainless are both unincorporated operating entities (or plants with company names) within an operating division of the corporate Respondent, Morco Industries, Inc. Based upon the testimony of Roger Stoll, vice president of the Equipment Division of Morco Industries, Inc., the corporate structure is as follows:

[1] The corporate structure of the employer will be discussed shortly. For convenience, reference to the company, and its relevant divisions, usually will be as Respondent.

Morrison, Incorporated[2] (Umbrella owner)

Morco Industries, Inc.

Equipment Division

All Southern Fabricators	Morco Stainless Steel Fabricators
(Tampa, Florida)	(Long Beach, Mississippi)

(And 7 other unidentified companies)

The relevant management hierarchy is as follows: Roger Stoll is vice president of the Equipment Division. He formulates the labor relations policy for the entire Equipment Division (nine companies) and sees that such is implemented. Although Stoll reports to Executive Vice President C. J. Hollingsworth, the record does not establish which firm Hollingsworth is with. Stoll also is in charge of corporate planning and administration. E. L. Ed Matthews is vice president for manufacturing for the Equipment Division and, it seems, subordinate to Stoll. William Temple is general manager of manufacturing for the Equipment Division. Manuel Santana is manager of southern. John Randall is manager of Long Beach. Stoll testified that he maintains fairly close communication with an official in charge of Morrison Cafeterias at Morrison, Incorporated, so that the production of restaurant equipment will be coordinated with the scheduled construction completion of Morrison's new cafeterias. Southern and Long Beach are the only two plants producing metal equipment for cafeterias in the Equipment Division. Southern has been in operation since 1969. Although Long Beach opened in early January 1980, there was no production for the first 2 months.

The central headquarters of Morco's Equipment Division is in Tampa, Florida, which houses Stoll's offices. Stoll visits all nine facilities in the Equipment Division on a regular basis to conduct supervision of their operations. Along with Matthews, Stoll made the decision to open Long Beach. The contract sales division of Morco sells the kitchen equipment that is fabricated at both Southern and Morco Stainless through a centralized sales operation to some of the same customers of both plants.

One might wonder why it is necessary to discuss in detail the relationships between the various entities here since they are all part of Morco Industries, Inc. However, as the Board stated (in a Sec. 8(b)(4)(B) context), "The Hearst cases hold, of course, that corporate identity does not in itself preclude neutrality among the parts of the corporation." *Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 560, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtin Matheson Scientific, Inc.)*, 248 NLRB 1212 (1980). Conceivably, Long Beach could be so autonomous as to be the equivalent of a subsidiary corporation so that the need to resolve the single employer concept would be more obvious. It is clear that Southern and Long Beach are far from being autonomous and in fact are closely integrated within Morco's Equipment Division. Moreover, the key factor, a centrally controlled labor relations policy, is present here.

In view of the foregoing, it is clear that Morco Industries, Inc., is the responsible Respondent in this proceeding. As Southern and Long Beach are mere unincorporated operating plants of Respondent Morco Industries, Inc., with a labor relations policy centrally controlled and administered by Vice President Roger Stoll of the Equipment Division, it is clear that for our purposes here, all entities[3] are a single employer. I so find.[4] *Los Angeles Marine Hardware Co., a Division of Mission Marine Associates, Inc.; and California Marine Hardware Co., a Division of Mission Marine Associates, Inc.*, 235 NLRB 720, 721, 731–732 (1978), enfd. 602 F.2d 1302 (9th Cir. 1979).

B. *Background and Chronology*

1. Site leased—Union recognized

In 1969, Respondent acquired its Tampa facility by leasing property that had formerly been occupied by another company. That firm's employees were represented by the Union. Respondent immediately recognized the Union, negotiated its own contract with the Union, and began operation with 12 employees in the bargaining unit. In the 11-year relations between Respondent and the Union, there have been no strikes directed at the Tampa plant, no arbitrations, and no lawsuits.

Operating as a "job shop," Southern's only initial customer was Morrison Cafeterias, a corporate affiliate, for whom it fabricated stainless steel equipment, including counters, dishwashers, etc. A few years before opening, Respondent began seeking and securing contracts with outside (unaffiliated with Morrison, Inc.) companies such as Marriott, Hyatt, Disney World, and the Federal government.

2. Tampa's physical capacity exhausted

During the first 10 years of its existence, Respondent's Southern operation experienced much success. The Tampa plant fabricated the equipment for 111 of the 112 Morrison cafeterias constructed during that period of time. While initially Respondent had orders for five or six Morrison cafeterias every year, the annual orders now average about 15 to 16.[5] Further, "the outside" portion of the business also prospered to the point that today more than 55 percent of the Tampa sales are to non-Morrison customers. The sales volume grew from $148,375 in 1970 to $3,434,293 for the fiscal year ending May 31, 1981.[6] This exceptional increase of 2,300 per-

[2] Also owns Morrison Cafeterias.

[3] Morco Industries, Inc.; the Equipment Division; Tampa; and Long Beach.

[4] Respondent does not address the matter in its brief and styles the caption as All Southern Fabricators, a Division of Morco Industries, Inc.

[5] Since its early years, Respondent has added new stainless steel restaurant products to its line for Morrison's, including ice bins, shelving, lettuce bins, dishwashers, hoods, and frosttops. Prior thereto, Morrison Cafeterias was forced to purchase this equipment from unaffiliated companies. These new products obviously contributed to the spiraling sales and heavy demand for work at the Tampa facility.

[6] The number of Respondent's full-time salespersons has grown from one in 1977 to six at the time of the hearing, an indication of the heavy

Continued

cent motivated two expansions of the Tampa plant to the point of more than exhausting the land available to Respondent. The original plant, leased in 1969, had 12,000 square feet. In 1971, an additional 12,000 square feet were added, and in 1975 still another 12,000 square feet of manufacturing space were tacked on to the structure. A diagram of the property, drawn to scale, was received into evidence as Respondent's Exhibit 4.

Even with these expansions, Respondent found that it was forced to contract out the equipment for a Morrison cafeteria in 1975 because of lack of capacity. In the winter of 1979, Respondent realized there was simply no additional room for expansion. The Pinellas Park zoning ordinance, section XVII, paragraph F, states, "the maximum area of allowable coverage of a lot or parcel by structure shall be fifty percent (50%) of the land area of the lot or parcel." Respondent was informed in February 1980 that a variance from that regulation would be necessary because more than 50 percent of its lot was devoted to the building. Photographs accepted into evidence depict the two additions, the small area for parking and driving around the plant, and the crowded conditions inside the plant.

In 1977, Respondent was forced to cancel some orders it had accepted from outside companies because it simply lacked the capacity to fill them. Howard Johnson, one of those companies, has not placed an order since that incident. Desperate for space in 1978, Respondent located and leased a separate warehouse building two blocks from its Tampa (Pinellas Park) plant for the purpose of staging and storing finished products. Testimony reflects that this unwieldy arrangement has been both inefficient and expensive.

3. Long Beach plant built

In the winter of 1978, Respondent selected Long Beach, Mississippi, as the site of a plant designed to relieve the over-expanded capacity of Tampa and to fabricate at least some of the equipment for planned Morrison cafeterias. Most of Morrison's new cafeterias, as Respondent's Exhibit 11 reflects, were opened in the mid-South. As explained by Vice President Stoll, the reason Respondent needed the Long Beach plant was that the capacity of the Tampa plant had been exhausted. Long Beach, Mississippi, was selected primarily because it is relatively close to the growth of Morrison Cafeterias, which are being constructed in mid-South/Southwest locations such as Lafayette and New Orleans, Louisiana; Dallas and Fort Worth, Texas; Springfield, Missouri; Oklahoma; and Ohio.[7] As described by Stoll, Respondent made a capital investment of $950,000 in building this new facility—the operational name of which is Morco Stainless Steel Fabricators.

Chastain Havens, union steward at Tampa, testified that it was general knowledge among the employees during June 1979 that the Long Beach plant was under construction. Checking with Tampa Plant Manager Manuel Santana, Jr., Havens learned that indeed the new plant was under construction. More will be said later herein on this subject.

Although the Long Beach plant opened the first part of January 1980, the buildup has been slow, and even 7 months later there were only 17 production and maintenance employees. The production completed in January and February was, in the words of Vice President Stoll, "nil."

4. Impact of Southern Bell's headquarters contract

On July 9, 1979, Respondent and Beers Construction Company signed a contract under which Respondent is to fabricate the stainless steel restaurant equipment for the cafeteria of Southern Bell's new general headquarters (a building in excess of 50 stories) in Atlanta, Georgia. This contract is by far the largest contract ever entered into by Southern. The contract, for slightly less than $1 million, called for installation of the equipment during April, May, and June 1980, in turn, required Respondent to complete work already scheduled in 1979 and then fabricate the Southern Bell work during the first quarter of 1980. Stoll testified that Respondent would not have accepted the project if the Long Beach plant had not been scheduled to open in January because Respondent knew, from its exhausted capacity at Tampa, and its previously existing orders, that it could not possibly handle all other work, as well as the Beers contract, if only Tampa's manufacturing capacity were available. Therefore, Respondent planned that with at least limited production capacity available at Long Beach beginning in January, some work could be allocated to it which, in turn, would "free up" capacity at Tampa.

In August and September 1979, Respondent's executives, including Vice President Stoll, had several meetings during which the allocation of work between the Tampa and Long Beach plants, beginning in January 1980, was extensively discussed. Stoll testified that, depending on the size of the job, some 3 to 5 months scheduling time is needed between the decision on where to produce and the actual beginning of production. Substantial lead time is necessary because of technical problems connected to preparing sketches and other matters prior to beginning the actual fabrication of the equipment. In discussing, in August and September, what work to fabricate at which plant, Stoll and his managers considered the skill of the respective work forces and location of the installation of the equipment to be fabricated. Applying these concepts to the facts before Respondent in October, the final business decision was made to utilize the more experienced work force at Tampa and to construct the sophisticated equipment connected with the Southern Bell Telephone job, while allocating the standard, relatively routine fabrication of shelving and other basic equipment for Morrison Cafeterias to the Long Beach facility.

So far as the record reveals, only these business factors of work force skill and customer location were analyzed and applied by Respondent in allocating the work contracted for. Thus, in October 1979 the work for the first

"outside" work it is doing. Moreover, the bargaining unit had grown from the original 12 to some 31 or 32 as of the time of the hearing.

[7] Stoll testified that additional reasons were (1) the very attractive bond offer from the State of Mississippi and (2) the fact that other sheet metal companies in the Mississippi Gulf Coast area provide at least some experienced sheet metal workers.

quarter of 1980 was scheduled for both Tampa and Long Beach by Respondent with the anticipated result that Tampa would continue operating at capacity, with no layoffs considered or anticipated, while Long Beach would begin fabrication of routine, standard work for Morrison Cafeterias.

5. Employees and Union learn of Long Beach plant—1979 contract negotiations—Tampa Manager Santana foresees no layoffs

In November 1978, Respondent interviewed two Tampa bargaining unit employees, Manuel Santana and Bob Steyer, for the plant manager's position at Long Beach. The position was offered to Santana that same month.[8] As previously noted, Union Steward Chastain Havens testified, as of about June 1979, the fact of construction of Long Beach was "general knowledge" among employees at Tampa. Havens asked Santana about it and the latter confirmed that the plant was under construction. Testifying further, Havens stated that he and Business Manager Salinas discussed the Long Beach situation before the October-December 1979 contract negotiations between the Union and Respondent.

In October, November, and early December 1979, the two parties conducted a series of negotiating sessions which ultimately resulted in a new collective-bargaining agreement with a 2-year term extending through December 31, 1981. At least twice, and perhaps three times during the negotiations, Harold Salinas, Union's business manager and chief negotiator, asked Vice President Stoll about the Long Beach plant. Stoll assured Salinas that Long Beach would have "little or no effect" on the bargaining unit in Tampa. According to the March 13, 1980, prehearing affidavit of Salinas, Stoll advised Salinas during the negotiation that Long Beach would fabricate the more simplified production items and that this would allow Tampa to increase its work volume.[9] The Union did not follow up with any oral or written requests for more details.

Sometime in late 1979, Respondent moved one of its press brakes from its Tampa plant to the Long Beach facility. Stoll testified that the press brake is used to make shelving, and was moved from Florida to Mississippi so that the latter facility could produce shelving. Around the same period of time, a punch press was moved from Tampa to Long Beach. After these machines left Southern less shelving was being manufactured at Tampa. Subsequent to this equipment being transferred to Mississippi, the Tampa employees no longer produced certain shelving, chicken boxes, pan tops, pot sinks, lettuce bins, salad tables, work tables, beverage tables, landing tables, dish carts, or beverage tables, all of which comprised about 33 percent of the work they previously had manufactured. These items were partially produced with punch presses and press brakes.[10] Union Steward Havens testified, without contradiction, that Tampa Manager Santana told him that the items were to be produced at Long Beach.

At a service pin and profit-sharing awards ceremony in late December 1979, Tampa Manager Santana took the opportunity to calm concern employees had been expressing about possible layoffs at Tampa because of the new plant. According to Havens, at the awards meeting Santana told employees that he did not feel that Long Beach would interfere with Tampa, that while Tampa would lose some work to Long Beach, he foresaw no future layoffs at Tampa.

6. Southern Bell job delayed—layoffs at Tampa

In December Respondent learned, for the first time, that its plans relating to the scheduling of work at the two plants for the early months of 1980 were in jeopardy. As Stoll explained at the hearing, the event undermining the allocation of work was the failure of Southern Bell Telephone Company to supply the necessary sketches and drawings and the resulting delay in the beginning of the fabrication of the equipment for that project. Upon receiving final confirmation of the delay in mid-December, Stoll was at first hopeful he could secure other contracts for Pinellas Park which would take the place of the Beers project. But by the middle of January, after attempts to secure work had failed, it became obvious that a layoff for lack of work would be necessary. Thus, in mid-January, a decision was made to lay off certain employees on January 31, and in mid-February a decision was made to lay off certain employees at the end of February.

At the hearing, the parties stipulated to the following information regarding the seven employees, generally classified as sheet metal mechanics, who received the reduction-in-force layoffs:

Name	*Hired/Laid Off*
Larry R. Davis	12-27-77/1-31-80
Constantine Kassars	12-4-78/1-31-80
Lawton M. Osborne	3-14-72/1-31-80
Mortimer Salch	2-24-75/1-31-80
Daniel P. Sinclair	6-25-79/1-31-80
Wallace Messer	9-9-77/2-29-80
John J. Neidlinger[11]	8-6-79/2-29-800

Stoll testified that the anticipated work slump occurred in February, with another in March, and that the layoffs were made for lack of work. He further testified that Respondent's work on the Southern Bell telephone

[8] Before matters progressed any further, a management change occurred and Santana became manager of the Tampa plant.

[9] At the hearing, Business Manager Salinas testified he could not then recall Stoll making the statement during the negotiations, but did recall that Stoll had said it at some unrecalled time and place. Salinas authenticated the affidavit. Under the circumstances, I credit Salinas' March 1980 version as an admission, or his past recollection recorded, even though the affidavit, Resp. Exh. 1, was not offered in evidence under either Fed. R. Evid. 801(d) or 803(5). Salinas testified that he did not recall Stoll's naming specific equipment to be manufactured at Long Beach. Union Steward Havens testified that none was specified. With a very brief and ambiguous reference, Stoll testified he informed Salinas "what items were going to be kept." The "items" could have been a generalized reference to "more sophisticated production" items, in a remark similar to that contained in Salinas' prehearing affidavit.

[10] Havens' percentage estimate seems a bit high, but it is clear that an indefinite layoff of 7 employees from a bargaining unit of only about 37 (an approximate figure) represents a reduction in the work force of almost 19 percent—a substantial number.

[11] Neidlinger is classified as a sheet metal apprentice.

project finally began about mid to late June 1980. In fact, he stated that Respondent has had a request with the Union[12] for two journeyman sheet metal mechanics for over a month, but the Union has not been able to comply.[13]

At the hearing, Stoll explained that he did not consider giving the Union prior notice of the impending layoffs because the Company had experienced layoffs in the past.[14] Stoll credibly testified that he believed in the truth of his remarks during the negotiations in October—November that Long Beach would have little or no effect on the Tampa employees. After the subsequent developments, he realized that Long Beach did have some effect, but he never so informed the Union. Although Stoll testified that conceivably there would have been a layoff at Tampa even had there been no Southern Bell project, and no Long Beach plant, such statement is not supported in the record.[15]

7. Mooneyhan meets with Stoll after layoffs

Immediately upon the reduction in force layoff of five unit employees on January 31, 1980, Salinas requested a meeting with Stoll "to discuss the shop in Mississippi."[16] Such a meeting was held on February 4, 1980, during which Salinas and International Organizer A. Q. Mooneyhan represented the Union, while Stoll and Ed Matthews represented Southern. At the meeting, which lasted only about 4 minutes, Mooneyhan stated that he wanted to discuss the shop in Mississippi, to which Stoll replied that he did not want to discuss it, and referred the union representatives to corporate attorney Philip Hunt in Mobile, Alabama. Hunt, when contacted by Mooneyhan, referred him back to Stoll at which time Salinas set up another meeting with Stoll. This second meeting between the Union and Respondent took place on February 13, 1980, at which time Stoll and Bill Temple, Morco Equipment Division general manager of manufacturing, met with Salinas and Mooneyhan. Mooneyhan again requested to discuss the Mississippi operation and informed Stoll that Southern could conceivably be in violation of the contract covering the Southern operation. Stoll admits that during this February 13, 1980, meeting Mooneyhan asked him about the transfer of work from Tampa to Long Beach and the consequent layoff of unit employees at Southern. Stoll informed the union representatives that he did not want to discuss the matter and again referred Mooneyhan to attorney Hunt.

Mooneyhan explained at the hearing that the purpose of the Union's request to discuss Long Beach had the threefold purpose to discuss: (1) the layoffs; (2) the work transferred; and (3) possible misuse of the union label at Long Beach.[17] He credibly denied that the purpose was to seek recognition at Long Beach.

Stoll testified that he referred the union representatives to corporate attorney Hunt because he believed they wanted to discuss possible recognition of the Union at Long Beach. This belief was based upon direct reports he had received from employees at Long Beach that a union organizer had shown them a copy of the Southern contract and said he could secure the same wages for them at Long Beach.

At times during his testimony, Stoll did not appear to be fully candid, and I do not credit him on this key point. Thus, while Stoll may have thought that one of the topics Mooneyhan wanted to discuss was possible recognition at Long Beach,[18] I am convinced he felt that the primary purpose of the visits was to discuss the work transfer and employee layoffs. Indeed, as already noted, Stoll concedes the significant point that at the second February meeting Mooneyhan did refer to the transfer of work and did ask about the layoffs. In short, it appears that Respondent was playing a game in which the union representatives were referred back and forth—apparently simply to delay the inevitable discussion about the layoffs and transfer of work. I therefore credit the testimony of Mooneyhan and Salinas concerning the purpose of the meeting and I accept Stoll's February 14, 1980, admission regarding Mooneyhan's reference to the work transfer and layoffs.

C. *Analysis and Conclusions*

Respondent argues, in essence, that its decision to transfer some of the more simple production items from its Tampa facility to its new Long Beach plant, in order to make room for sophisticated work required in the huge Southern Bell project, was a decision lying "at the core of entrepreneurial control" and was "fundamental to the basic direction of [the] corporate enterprise," and therefore outside the area of mandatory bargaining. *Fibreboard Corp.* v. *N.L.R.B.*, 379 U.S. 203, 225 (1964) (Justice Stewart concurring). It contends that it is significant that the decision to transfer the work was related directly to its nearly $1 million capital investment at Long Beach and its ability to take on the largest contract in Southern's history, the $952,053 subcontract from Beers Construction Company for kitchen work at Southern Bell Telephone's new headquarters building in Atlanta, Georgia. Of importance, in this line of argument, is the fact that the situation at Tampa which presented

[12] The Union, according to Salinas, serves as Respondent's hiring hall at Tampa.

[13] A letter dated July 7, 1980, from Santana to Salinas, and referring to telephone requests beginning June 24, 1980, is in evidence as Resp. Exh. 2. In the letter, Santana "confirms" his earlier requests for one welder, polishers Lawton Osborne and Connie Kassars [laid off 1-31-80] and four journeymen, including Daniel Sinclair [laid off 1-31-80. Salinas testified that eventually both Osborne and Kassars returned to work at Southern, but that Sinclair has not since he had been employed and "it's not customary usually to take a guy out of a shop that's already employed on the referral procedure."

[14] No clarifying evidence was presented.

[15] A significant amount of overtime was being worked at Tampa in the last half of 1979. Thus, Stoll's speculation that the layoffs could have occurred in any event is not logically supported by the evidence. Indeed Stoll admitted that at the time of the Tampa layoffs, the simpler work previously transferred from Tampa to Long Beach was in fact being manufactured at the latter facility.

[16] According to Stoll, the union representatives referred to "Long Beach" rather than to "Mississippi." The difference is immaterial.

[17] He explained that he wanted to make sure that the Union's label was not being placed on items fabricated at Long Beach.

[18] Even this is dubious since Stoll concedes he was unaware of any organizing campaign and assumes he would have been alerted had there been one.

management with a critical problem was not the cost of labor[19] but the finite capacity of the plant.

However, in *Ozark Trailers, Incorporated and/or Hutco Equipment Company and/or Mobilefreeze Company, Inc.*, 161 NLRB 561, 566–567 (1966), the Board declared that whether a particular management decision must be bargained about does not turn upon the commitment of investment capital, or whether it involves a "major" or "basic" change in the nature of the employer's business. While such matters are of significance to an employer, they also are of *profound significance* to the employees who have invested years of their working lives developing the skills they use to earn their livelihood. They have a substantial interest in protecting that livelihood, and the duty to bargain over any such decision which adversely affects that livelihood, as the Board recently observed, places only a minimal burden on an employer. *Brockway Motor Trucks, Division of Mack Trucks, Inc.*, 251 NLRB 29 (1980).

On the other hand, it is axiomatic that the duty to bargain over a decision attaches only where the decision has a foreseeably adverse effect upon the bargaining unit. *Westinghouse Electric Corp., Bettis Atomic Power Laboratory*, 153 NLRB 443, 446 (1965). At the time Respondent's allocation decision was finalized in October 1979, Respondent reasonably foresaw "little or not" adverse impact on the Tampa bargaining unit. Therefore, there was no duty to bargain over the decision—until such time as a reasonably prudent business person would have recognized that there might well be an adverse impact. In our case, that moment came in mid-December.[20] With the mid-December 1979 news that the Southern Bell Project would be delayed, Respondent's bargaining duty finally did attach, for it was obvious that, in the absence of Respondent locating some interim work, some adverse consequences would affect the Tampa employees.

Respondent argues that it has a history of subcontracting when production capacity reached 100 percent and, therefore, this fact constitutes a past practice exempting it from any duty to bargain over the transfer of the standard Morrison cafeteria items to Long Beach. This contention apparently is based upon the very brief statement by Stoll concerning an event in June 1975 when Southern contracted with another fabricator to build the equipment for the one Morrison cafeteria Southern did not equip. No further details, such as whether the Union was notified and agreed, are given. It seems clear, moreover, that no layoffs were involved. In any event, Respondent's duty to bargain here did not arise until mid-December. Moreover, Tampa Manager Santana's December (apparently) statement to Union Steward Havens that the lettuce bins (and other Morrison standard items) were being sent to Long Beach for production did not absolve Respondent of its obligation to notify the statutory representative. I note that Business Manager Salinas represented the Union at negotiations for a renewal contract, signed the contract on behalf of the Union, and was the addressee of Southern's July 7, 1980, written request for additional workers (Resp. Exh. 2). Thus, Respondent is well aware of the fact it must notify the official statutory representative involving matters of substantial importance. *Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678 (1944).

In light of the foregoing, I find that Respondent violated Section 8(a)(5) of the Act by not alerting the Union in mid-December 1979 regarding the nature of its allocation decision and by not giving the Union the opportunity to bargain regarding that decision and, as a practical matter, its effects.

It therefore follows that Respondent continued to breach its bargaining obligation at the February 4 and 13, 1980, meetings by refusing to discuss the decision and its effects (including the layoffs) and it must be ordered to remedy these violations.

It is not illogical to say that in mid-December Respondent should have given the Union notice and the opportunity to bargain over the decision as well as the effects. While the Union may not have had any alternative suggestions, and may have acquiesced in the decision, that is a matter better left to the parties for bargaining than to speculation here. Similarly it does not come too late to require bargaining now over the decision and its effects even though the Tampa facility is working at full blast. The Southern Bell project is not, so far as the record discloses, long term in the sense of the Morrison cafeteria projects. With full bargaining on the subject, the parties may agree to some other solution than leaving the Morrison standard items at Long Beach.

Although bargaining on the matter should be required, as requested by General Counsel, an order directing Respondent to return the work to Tampa, as requested by the Charging Party at the hearing, would seem inappropriate. Tampa, as noted, is at full capacity with the Beers contract (Southern Bell project) and the skills required (and present in the Tampa work force) are more sophisticated than for the Morrison standard items transferred to Long Beach. Accordingly, I shall not recommend that the work be retransferred.

Offers of reinstatement, with full backpay, also should be required. The extent of the obligation owed regarding this subject is a matter better left to the compliance stage.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Respondent at its 5010 South Lois Avenue, Tampa, Florida, facility constitute a unit appro-

[19] A factor referred to by the Board in *Ozark Trailers, Inc. and/or Hutco Equipment Company and/or Mobilefreeze Company, Inc.*, 161 NLRB 561, 567 (1966).

[20] It is undisputed that the Union did raise the subject of the new Long Beach plant two or three times during October–November in contract negotiations. Each time Stoll answered the very limited questions Union Representative Salinas asked. That Salinas did not press for more details, even though it would appear he had no right to do so, is not Stoll's fault. In effect, the Union waived its claim to a right to more details regarding the decision, and its effects, as of that moment. As a corollary, it may be said that Respondent waived its right to remain silent to the extent that Stoll answered.

priate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive collective-bargaining representative of all the employees in the unit described above in Conclusion of Law 3, and Respondent is now, and has been at all times material herein, legally obligated to recognize and collectively bargain with the Union as such representative.

5. Since mid-December 1979, Respondent has violated Section 8(a)(5) and (1) of the Act by failing to give notice to the Union over Respondent's decision to transfer certain of its work from its Tampa, Florida, facility to its Long Beach, Mississippi, plant, by unilaterally transferring such work, and the opportunity for the Union to bargain over such decision and the effects thereof.

6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in the unfair labor practices set forth above, I shall recommend that it be ordered to cease and desist therefrom, to take certain affirmative action designed to effectuate the policies of the Act and to post signed and dated copies of an appropriate notice to employees.

As Respondent, by unlawfully refusing after mid-December 1979 to bargain with the Union concerning the decision to transfer work and the effects thereof, and laid off seven employees as a partial consequence of its decision to transfer, I shall recommend that Respondent be ordered to make each employee whole for any loss of earnings or benefits he may have suffered as a result of his layoff. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[21]

In view of the fact that by June 1980 Respondent's Tampa facility was enjoying full employment as a result of the work on the Southern Bell Telephone Company project, and that Respondent is operating its Tampa plant at maximum physical capacity, I shall not recommend that Respondent be ordered to restore the *status quo ante* by retransferring the work from the Long Beach facility to the Tampa plant.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[22]

The Respondent, Marco Industries, Inc.; and All Southern Fabricators, a Division of Morco Industries, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with the Union as to the decision to transfer unit work, and unilaterally transferring unit work without bargaining with the Union over such decision, and the effects thereof.

(b) In any like or related manner failing or refusing to bargain collectively with the Union.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request by the Union, bargain collectively with the Union with respect to the decision to transfer certain production work from its Tampa, Florida, plant to its Long Beach, Mississippi, facility, and the effects of such decision.

(b) Offer to the seven employees laid off on January 31, 1980, and February 29, 1980, to the extent such offers have not been made, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered by them in the manner set forth in the section above entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Tampa (Pinellas Park), Florida, facility and at its Long Beach, Mississippi, plant copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 12, after being duly signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply therewith.

[21] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[23] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with Sheet Metal Workers International Association, Local Union No. 57, affiliated with Sheet Metal Workers International Association, AFL-CIO, as to the decision to transfer unit work, or unilaterally transfer unit work, without bargaining with such Union, or any other labor organization which is your exclusive bargaining representative, over the decision to transfer and its effects upon you.

WE WILL NOT in any like or related manner fail or refuse to bargain collectively with Sheet Metal Workers International Association, Local Union No. 57, affiliated with Sheet Metal Workers International Association, AFL-CIO, or any other labor organization which is your exclusive collective-bargaining representative.

WE WILL, upon request by the Union, bargain collectively with it with respect to the decision to transfer certain unit work from our Tampa, Florida, facility to our Long Beach, Mississippi, plant.

WE WILL offer to the seven employees named below, to the extent offers have not already been made, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed, and, in the manner prescribed by law, make them whole for loss of pay suffered by them as a result of our laying them off in January-February 1980, plus interest.

Larry R. Davis	Daniel P. Sinclair
Constantine Kassars	Wallace Messer
Lawton M. Osborne	John J. Neidlinger
Mortimer Salch	

MORCO INDUSTRIES, INC.; AND ALL SOUTHERN FABRICATORS, A DIVISION OF MORCO INDUSTRIES, INC.